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Implementing competitive neutrality to government businesses

Deborah Healey
What is competitive neutrality? Broad definitions

Virtanan and Valkama (World Competition 2009)

• Complain of lack of clarity in definition and poor theoretical underpinning of the concept

• Define it by looking at all sources of market distortion, both actual and potential- so their concept is far broader than just government/non-government competitors in a market
Competitive neutrality: state capitalism

• Issues of “state capitalism” identified as new global challenge

• Terminology of “reasserting competitive neutrality” used

• (APCAC 2012 US Asia Business Summit; The Economist Jan 2012)
Competitive neutrality

For the purposes of this project the meaning is quite clear:

“Significant government business activity in competition with the private sector should not have a competitive advantage by virtue of government ownership and control”

• That is, the focus is limited to one jurisdiction- we are looking at the “home market”

• “Competitive neutrality policy” is steps or mechanisms put into place to ensure that the market is “neutral” in this respect
“...the most systematic distortions arise when government businesses participate in competitive markets” (Hilmer)

• Concluded that this should be dealt with in a “systematic, nationally consistent manner”

• Introduction of competitive neutrality to government businesses

• See paper at http://archive.unctad.org/templates/page.asp?intItemID=6128&lang=1
Shortcomings of government businesses

- Poor productivity and pricing practices
- Lack of requirement to recover costs or price efficiently
- Non-accountability of managers
- Conferral of monopoly rights

Answer: commercialisation, privatisation, and competitive tendering
Competitive advantages of government businesses

- immunity from taxes, charges and regulatory requirements
- explicit or implicit government guarantees on debts
- concessional interest rates on loans
- no accounting for depreciation expenses or achieving commercial rate of return
- effective immunity from bankruptcy
- pricing policies which do not take full account of production costs
Competitive disadvantages of government businesses

- greater accountability obligations, such as administrative review and reporting requirements
- community service obligations
- reduced managerial autonomy
- requirements to comply with government policy on wages, employment and industrial relations
- other policy wishes of government
Net competitive advantage/disadvantage

Sometimes difficult to determine, but where government businesses have a net competitive advantage, the problem is that they may be able to price below more efficient private rivals.
All Australian governments agreed on a co-operative CN model

- Neutralise net competitive advantages of Government business
- corporatise businesses supplying services directly to the public
- corporatisation or pricing directions where services supplied to other government bodies
- NCC established to oversee process
- GTEs have combined assets of more than $174b and generate $55b in revenue annually
Measurement of progress in Australia

- Most jurisdictions have full cost attribution for their significant business activities
- Slow policy implementation in some industries
- Complaints handling could be improved (2003 NCC)
- Progress mixed: all states and territories had corporatised major government businesses and other significant businesses adopted CN principles
- Scope for improving coverage and operation of complaints processes
- Commitment to better governance required
- Rate of return still below commercial rates for most government businesses
Research project agenda: relevant questions for the jurisdictions

- What is the nature of SOEs/ government bodies in the jurisdiction?
- Are they caught by competition law?
- Is CN addressed at all? Corporatisation? Governance? CN framework?
- Which bodies should be subject to CN?
- Advantages/disadvantages of government ownership?
- Determining net competitive advantages
- Mechanisms e.g. complaints? supervision?
Malaysia
Khatina Wan, May Fong Cheong

• Detailed reports have outlined the development of government businesses and categorised various of these organisations
Progress with research

China
Professor Xu Shiying

- Report with substantial historical background to the establishment and operation of SOEs in the socialist market economy
- Various categories described, indicating control, regulation and monitoring
- Extent of corporatisation
- Some progress on advantages/ disadvantages
- Relationship with AML and industry policy considered
Progress with research

Switzerland

Fabio Babey

- Confirms the relationship between the entities and the competition law
Progress with research

Pakistan

Joseph Wilson

- SOEs caught by Competition Act of 2010

- Focus in Pakistan in relation to issues of competitive neutrality is competition advocacy, which is specifically mandated in the Competition Act (s29)
2nd half of 2012

• Continued examination of questions by each jurisdiction:
  - Which bodies should a CN policy apply to?
  - What are the advantages/disadvantages of SOEs?
  - How might the advantages be addressed?

• Review of developments in other countries to assist with more concrete options